IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 10TH OCTOBER 2007 / 18TH ASWINA 1929

OP.No. 2445 of 2002(N)

PETITIONER:

SREE VIDHYA HIGH SCHOOL,ERUTHENPATHY,
PALAKKAD DISTRICT, THROUGH ITS MANAGER.

BY ADV. SRI.M.P.KRISHNAN NAIR

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY
   THE CHIEF SECRETARY, GOVERNMENT SECRETARIAT,
   THIRUVANANTHAPURAM.

2. SECRETARY TO GOVERNMENT,
   GENERAL EDUCATION, THIRUVANANTHAPURAM.

3. THE DIRECTOR OF PUBLIC INSTRUCTION,
   THIRUVANANTHAPURAM.

4. DEPUTY DIRECTOR OF EDUCATION,
   PALAKKAD.

5. DISTRICT EDUCATIONAL OFFICER,
   PALAKKAD.

BY GOVERNMENT PLEADER SHRI.T.T.MAHMOOD.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 3/10/2007, THE COURT ON 10.10.2007 DELIVERED THE FOLLOWING:

O.P.NO.2445/02.

APPENDIX

PETITIONER'S EXHIBITS:

P1. COPY OF THE REPRESENTATION DTD.8.6.90 SUBMITTED BY THE PARENT'S ASSOCIATION TO THE MANAGEMENT.

P2. COPY OF THE PROPOSAL FOR STAFF FIXATION FOR 90-91.

P3. COPY OF THE PROCEEDINGS DTD.27.9.90 BY R5.

P4. COPY OF THE ORDER DTD.3.1.91 BY R3.

P5. COPY OF THE REVISION PETITION DTD.17.1.91 BEFORE THE GOVT.

P6. COPY OF THE REPRESENTATION DTD.10.3.91 BY P.T.A.

P7. COPY OF THE GOVT. ORDER DTD.8.7.91.

P8. COPY OF THE CIRCULAR DTD.1.10.85.

P9. COPY OF THE GOVT. ORDER DTD.14.3.91.

P10. COPY OF THE GOVT. ORDER DTD.6.4.92.

P11. COPY OF THE COMMON JUDGMENT DTD.10.10.00. IN O.P.9555/91

P12. COPY OF THE GOVT. ORDER DTD.4.9.01.

Sdk+

///True copy///

P.A. to Judge.

S.SIRI JAGAN, J.

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O.P.No. 2445 of 2002

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Dated this the 10th day of October, 2007

J U D G M E N T

In this original petition the manager of the Sree Vidhya High School, Eruthenpathy, Palakkad District, challenges Exts.P4, P7 and P12 orders of the Joint Director of Public Instruction and the Government, refusing sanction for the post of Drawing Teacher in the school, in addition to the post of Music Teacher, for the academic year 1990-91, in accordance with Rule 6(4) of Chapter XXIII of the KER. The said post was not sanctioned in the staff fixation order for the year 1990-91, which is Ext.P3 issued by the DEO, Palakkad. Petitioner's appeal before the Joint Director of Public Instruction was rejected by Ext.P4 order. The petitioner filed a revision before the Government, which was also rejected by Ext.P7 order. Petitioner filed O.P.No.9555/1991 before this court challenging Ext.P7 order on the ground that in view of Exts.P9 and P10 Government orders, the school is entitled to an additional post of Drawing Teacher also. In that original petition, by Ext.P11 judgment, a learned

Judge of this court set aside Ext.P7 order and directed the Government to reconsider the matter with reference to Exts.P9 and P10 orders of the Government in relation to revision of school curriculum in the high schools in the State. It is pursuant to the said judgment that the Government reconsidered the matter and passed Ext.P12 order again rejecting the claim of the petitioner.

2. The contention of the petitioner is that by virtue of Rule 6(4) of Chapter XXIII of the KER, high school section of every complete high school is entitled to one full time post each of Physical Education Teacher, Drawing Teacher and Music Teacher irrespective of the number of periods of work per week in each of the concerned subject. He has also got a contention that in any event, the number of periods for each subject has to be calculated in accordance with the revised curriculum approved by the Government as per Exts.P9 and P10, in which case, there would be an additional post of Drawing Teacher also for the school. On these averments the petitioner seeks the following reliefs in this original petition.

"i) to call for the entire records of the petitioner's case leading to issue of Ext.P-4, Ext.P7 and P-12 and quash the same.

ii) to issue a writ in the nature of mandamus or any other appropriate writ/writs declaring that the Ext.P-12 issued by the 1st respondent is highly illegal, arbitrary, malafide in nature, unjust, unreasonable and unsustainable and petitioner school is entitled to appoint one Drawing Teacher in addition to the Music Teacher with effect from 10/12/90.

iii) to issue a writ in the nature of mandamus or any other appropriate writ directing the respondents to sanction the post of Drawing Teacher in Sree Vidhya High School, Eruthenpathy from the date of effect of the staff fixation order i.e. 15.7.1990 and approve the appointment of Sreekumar as Drawing Teacher with effect from 10/12/90."

3. The 1st respondent has filed a counter affidavit refuting the claims of the petitioner. According to the counter affidavit, clauses (a), (b) and (c) of Sub Rule 4 of Rule 6 of Chapter XXIII of KER have to be read in conjunction with the provisos to that rule. According to them, as per the second proviso, no full time post of specialist teacher under any of the three categories mentioned in Sub Rule 4 shall be sanctioned if the number of periods per week in the concerned subject is less than 5. They would submit that going by the approved distribution of periods as per Chapter XXIII of KER, the total number of periods for Drawing and Music together (Art subjects), is only six and therefore, both posts of Drawing Teacher and Music Teacher

cannot be sanctioned. According to them, Exts.P9 and P10 Government orders have never been implemented in the State by appropriate amendments to the Rules in view of the financial stringency of the State and therefore, the petitioner cannot establish any right for an additional post of Drawing Teacher based on these Government orders.

4. I have considered the rival contentions in detail.

5. It is true that at first blush it would appear that as per Rule 6(4) of Chapter XXIII of the KER each complete high school is entitled to one full time post each of Physical Education Teacher, Drawing Teacher and Music Teacher irrespective of the number of periods of work per week for those subjects. But the proviso to the said Rule specifically states that no Full full time post of specialist teacher under any of the categories mentioned in the said sub rule shall be sanctioned if the number of periods of work per week in the concerned subject is less than five. The main section has to be interpreted with reference to the proviso also harmoniously. It cannot be assumed that proviso does not have any meaning at all. If a harmonious construction which

gives effect to both the rule and proviso is possible, the same has to be adopted. Interpreting the main section and the proviso harmoniously, I am of opinion that the main section only contemplates that there shall only be one teacher of Physical Education, Drawing and Music regardless of the number of periods available for those subjects. But that one post can be sanctioned only if there are minimum five periods in a week for each subject. This view is supported by two Single Judge decisions of this court in O.P.No.935/1992 and connected cases and O.P.No.3285/1993 and connected case. In O.P.No.935/1992 and connected cases, a learned Single Judge of this court interpreted Rule 6(4) of Chapter XXIII of the KER as follows:

> '5. The Rule which has to be interpreted for deciding the issue raised in these original petitions reads as follows:
>
> *"4). Notwithstanding anything contained in rule 7, in High School section of every complete High School there shall be:-*
>
> *a) One full-time post of Physical Education Teacher and one full time post of Drawing Teacher irrespective of the number of periods of work per week in each of the concerned subject.*
>
> *b) One full time post of Music Teacher irrespective of the number of periods of work per week for music.*
>
> *c) One full time post of Sewing Teacher if there is no Craft Teacher provided that there are not less than 200 girls in High School Classes:*

Provided that the existing part-time post of Physical Education, Drawing, Music, Sewing or Needle-work shall not be converted into full time posts unless the incumbents holding the posts are fully qualified to hold the full time posts:

[Provided further that no full-time post of specialist teacher under any category mentioned above shall be sanctioned, if the number of period of work per week in the concerned subject is less than 5]"

It is contended on behalf of the petitioner that the second proviso is applicable only to the post referred under Clause (c) namely Sewing Teacher and Craft Teacher and that it has no application to Clause (b) where Music Teacher is dealt with. I find it difficult to accept the above contention. As correctly submitted on behalf of the respondents 1 and 2 the second proviso will be applicable all the three clauses under Sub Rule (4). Clause (a) deals with Physical Education Teacher, Clause (b) deals with Music Teacher and Clause (c) deals with Sewing Teacher. A reading of the first proviso would show that the provisions contained under that proviso is applicable not only to the post of Sewing Teacher but to the Physical Education Drawing and Music coming under Clause (a) and (b). So also the second proviso is application [sic] to full time post of specialist teachers under any category mentioned under Clause (a), (b) and (c). Therefore, I find no merit in the contentions raised by the learned Counsel for the petitioner that since wording in clause (b) is that one full time post of Music Teacher can be sanctioned irrespective of the number of periods of work per week for music, even if there are only 4 periods a post of Music Teacher is sanctioned. What has been provided in the clause (b) is that there will be only one post of Music Teacher irrespective of the number of periods of work per week for music. Minimum period necessary for one post of Music Teacher is provided under the second proviso. In view of the above, I find that the stand taken by the District Educational Officer, Attingal in staff fixation orders for the year 1991-92, 1992-93 and 1993-94 that the School is not entitled to the post of Music Teacher as the number of period available for music is only 4 is correct. It is made clear that the petitioner will be entitled to the salary during the period in which she had worked on the basis of the interim orders of stay obtained from this court in the above mentioned three Original Petitions.'

(Emphasis supplied)

In O.P.No.3285/1993 and connected cases in paragraphs 6 and 7

it is held as follows:

> "6. As per Rule 6, Chapter XXIII, K.E.R., which provides for sanctioning of specialist teachers in High School, it is mandatory that there shall be atleast five periods for sanctioning of a drawing post, in terms of the second proviso to the said Rule. Counsel for petitioner in O.P. 3285 of 1993 submits that the main part of the Rule 6(4) provides that one full time post shall be sanctioned irrespective of the number of periods and the proviso limits the operation of main part of the Rule and therefore, it shall be taken that the proviso is applicable only when there are more than 25 divisions warranting a second post of specialist teacher. I do not find anything to that extent in Rule 6(4). The posts mentioned in Rule 6(4) can be sanctioned only subject to the proviso only on satisfying atleast a minimum periods of five.
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> 7. Counsel further pointed out the effect of Rule 7 Chapter XXIII, K.E.R. But what is stated in Rule 6(4) is about the sanctioning of post notwithstanding what is stated in Rule 7. Therefore, sanctioning of specialist teachers in High School has to be governed by Rule 6(4) inclusive of its proviso. In such circumstances, no post can be sanctioned unless there are atleast five periods."
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> (Emphasis supplied)

I am in respectful agreement with the above decisions and therefore, I am satisfied that the petitioner cannot claim a full time post of Drawing Teacher also in addition to the post of Music Teacher unless it is proved that the number of periods for Drawing and Music available in the school is a minimum of 5 for each subject.

6. The next contention raised by the petitioner is that the number of periods has to be reckoned with reference to Exts.P9 and P10 Government orders on the subject, whereby the

Government has revised the school curriculum for non-scholastic subjects, viz., work experience, Art Education and Health and Physical Education in tune with National Policy on Education. Therefore, the number of periods for Art subjects has to be reckoned with reference to those orders and if done so, the petitioner's school would certainly have sufficient periods for both Drawing and Music to have one full time teacher in each Drawing and Music.

7. The contention of the Government in answer to the above is that Exts.P9 and P10 Government orders had never been implemented in the State and therefore, the petitioner cannot raise any claim based on those orders.

8. This question also was considered by the learned Single Judge in O.P.No.3285/93 and connected cases, wherein, in paragraph 5, a similar contention on behalf of the State was accepted by the learned Single Judge. Paragraph 5 reads thus:

> "5. Petitioner's contention with regard to the periods is based on Exts.P6 and P7. But it is stated in the counter affidavit that Ext.P6 had not been implemented for the purpose of sanctioning the post. Therefore, six periods were not available in the school. It is also stated in paragraph 12 of the counter affidavit that Ext.P7 was also not implemented for that purpose. Therefore, the respondents maintain the view that periods available in St.Paul's High School, Vazhoor, for

> drawing was only less than five, namely, 4½ that is, three periods each in Standard VIII and half period in each division of Standard IX."

Exts.P6 and P7 referred to in the said decision are Exts.P10 and P9 in this original petition. In the counter affidavit filed by the 1st respondent in this original petition also it is specifically stated that Ext.P10 has not been implemented. In fact in Ext.P10 what has been stated is only that "Government have examined the syllabus in detail and are pleased to approve the revised syllabus for non-scholastic subjects (as appended) for implementation in the schools beginning with the academic year 1992-93". There is no follow up order pursuant to Ext.P10 directing implementation of the same without which no post can be sanctioned based on Ext.P10. In any event, the issue involved in this writ petition relates to the academic year 1990-91 and Ext.P10 refers to the academic years beginning with 1992-93.

9. Therefore, the claim of the petitioner for sanctioning of an additional post of Drawing Teacher has to be decided on the basis of the norms existing without reference to Exts.P9 and P10.

Going by the norms, as in force at the relevant time and even now, admittedly there are only six periods for Drawing and Music together in the school. There is already a post of Music Teacher sanctioned taking into account five periods for Music. Then for Art there is only one extra period for which an additional post of Drawing Teacher cannot be sanctioned, going by the proviso to Rule 6(4).

That being so, there is no merit in the claim of the petitioner and accordingly the original petition is dismissed.

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sdk+ S.SIRI JAGAN, JUDGE

///True copy///

P.A. to Judge.

S.SIRI JAGAN, J.
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O.P.No. 2445 of 2002
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10th October, 2007

J U D G M E N T

S.SIRI JAGAN, J.

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O.P.No. 2445 of 2002

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J U D G M E N T

October, 2007